



[6450-01-P]

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CR-002]

Notice of Petition for Waiver of Hussmann from the Department of Energy Commercial Refrigerator, Freezer and Refrigerator-Freezer Test Procedure, and Grant of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of petition for waiver, notice of grant of interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes the Hussmann Inc. (Hussmann) petition for waiver and application for interim waiver (hereafter, “petition”) from the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of commercial refrigerators, freezers and refrigerator-freezers. Today’s notice also grants an interim waiver of the commercial refrigerator, freezer and refrigerator-freezer test procedure. Through this notice, DOE also solicits comments with respect to the Hussmann petition.

DATES: DOE will accept comments, data, and information with respect to the Hussmann

petition until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by case number CR-002, by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the instructions for submitting comments.
- E-mail: AS_Waiver_Requests@ee.doe.gov. Include “Case No. CR-002” in the subject line of the message.
- Mail: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J/1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-2945. Please submit one signed original paper copy.
- Hand Delivery/Courier: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L’Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L’Enfant Plaza SW., Washington, DC, 20024; (202) 586-2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except on Federal holidays. Available documents include the following items: (1) this notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) DOE rulemakings and waivers regarding commercial refrigeration equipment. Please call Ms. Brenda

Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE-2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-9611. E-mail: AS_Waiver_Requests@ee.doe.gov.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0103. Telephone: (202) 586-7796. E-mail: mailto:Elizabeth.Kohl@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94-163 (42 U.S.C. 6291-6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances. Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)). Part C of Title III provides

for a similar energy efficiency program titled “Certain Industrial Equipment,” which includes commercial refrigerators, freezers and refrigerator-freezers and other types of commercial equipment.¹ (42 U.S.C. 6311-6317)

Section 343(a)(6)(C) of EPCA (42 U.S.C. 6314(a)(6)(C)) directs DOE to develop test procedures to establish the appropriate rating temperatures for products for which standards will be established under section 342(c)(4), i.e., (1) ice-cream freezers; (2) commercial refrigerators, freezers, and refrigerator-freezers with a self-contained condensing unit without doors; and (3) commercial refrigerators, freezers, and refrigerator-freezers with a remote condensing unit. Other provisions of section 343(a)(6) provide DOE with additional authority to establish and amend test procedures for commercial refrigeration equipment. On December 8, 2006, DOE published a final rule adopting test procedures for commercial refrigeration equipment, effective January 8, 2007. 71 FR 71340. Title 10 of the Code of Federal Regulations (10 CFR) 431.64 directs manufacturers of commercial refrigerators, freezers and refrigerator-freezers to use Air-Conditioning and Refrigeration Institute (ARI) Standard 1200–2006, “Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets” when measuring the energy consumption of those products. DOE established energy conservation standards for certain classes of commercial refrigerators effective January 1, 2012 (74 FR 1092, Jan. 9, 2009). The basic models included in Hussmann’s petition are subject to the applicable standards established in that rulemaking and are therefore required to be tested and rated according to the prescribed DOE test procedure, AHRI 1200-2006, as of January 1, 2012.

¹ For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A-1.

The regulations set forth in 10 CFR part 431.401 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered products. The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) will grant a waiver if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(f)(4). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.401(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect pursuant to the provisions of 10 CFR 430.401(g).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.401(e)(3). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.401(e)(4).

II. Application for Interim Waiver and Petition for Waiver

On December 7, 2011, Hussmann submitted a petition for waiver from the DOE test procedure applicable to commercial refrigerators, freezers and refrigerator-freezers set forth in

10 CFR 431.64. Hussmann requested the waiver for its commercial refrigerators intended to hold and display bulk produce (whole, uncut fresh fruits and/or vegetables). These refrigerators are manufactured in both “remote” and “self-contained” versions. These products are classified as commercial refrigerators, freezers, and refrigerator-freezers with a self-contained condensing unit and without doors (category viii of the applicable test procedure requirement set forth in the table at 10 CFR 431.64(b)(2)) and commercial refrigerators, freezers, and refrigerator-freezers with a remote condensing unit (category ix of the above table). The applicable test procedure for these products is ARI 1200-2006. Manufacturers are directed to use this test procedure pursuant to 10 CFR 431.64.

Hussmann seeks a waiver from the applicable test procedure under 10 CFR 431.64 on the grounds that its commercial refrigerators contain design characteristics that prevent testing according to the current DOE test procedure. Specifically, Hussmann asserts that the refrigerators are not able to operate at the specified integrated average temperature of 38 °F. Consequently, Hussmann requested that DOE grant a waiver from the applicable test procedure, allowing the specified products to be tested at 49 °F, which Hussmann asserts is the lowest temperature at which the specified basic models can operate.

On December 7, 2011, Hussmann also submitted an application for an interim waiver from the test procedures at 10 CFR 431.64 for its commercial refrigerators. An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be

granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. (10 CFR 430.401(e)(3)).

DOE has determined that Hussmann's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship Hussmann might experience absent a favorable determination on its application for an interim waiver. DOE has determined, however, that it is likely Hussmann's petition will be granted, and that it is desirable for public policy reasons to grant Hussmann relief pending a determination on the petition. DOE believes that it is likely Hussmann's petition will be granted because the refrigerators specified in Hussmann's petition are not able to operate at the specified integrated average temperature of 38 °F. In addition, DOE has determined that it is desirable that the energy efficiency of this equipment be able to be tested and rated in a manner similar to other commercial refrigeration equipment while DOE considers the petition for waiver. As a result, DOE grants an interim waiver to Hussmann for the specified models of its commercial refrigerator products. Therefore, *it is ordered that*:

The application for interim waiver filed by Hussmann is hereby granted for Hussmann's specified models of commercial refrigerators, subject to the specifications and conditions below. Hussmann shall be required to test and rate the specified basic models according to the alternate test procedure as set forth in section III, "Alternate test procedure."

The interim waiver applies to the following basic model groups:

DBRP-03-4-R, DBRP-03-6-R, DBRP-03-8-R, DBRP-03-10-R, DBRP-03-12-R, DBRP-03-14-R, DBRP-03-16-R, DBRP-03-18-R, DBRP-03-20-R, DBRP-03-22-R, DBRP-03-24-R, DBRP-03-26-R, DBRP-03-28-R, DBRP-03-30-R, DBRP-03-32-R, DBRP-03-34-R, DBRP-03-36-R

DSRP-03-5-R, DSRP-03-6-R, DSRP-03-8-R, DSRP-03-10-R, DSRP-03-12-R, DSRP-03-14-R, DSRP-03-16-R, DSRP-03-18-R, DSRP-03-20-R, DSRP-03-22-R, DSRP-03-24-R, DSRP-03-26-R, DSRP-03-28-R, DSRP-03-30-R, DSRP-03-32-R, DSRP-03-34-R, DSRP-03-36-R

DSRPI-03-5-R, DSRPI-03-6-R, DSRPI-03-8-R, DSRPI-03-10-R, DSRPI-03-12-R, DSRPI-03-14-R, DSRPI-03-16-R, DSRPI-03-18-R, DSRPI-03-20-R, DSRPI-03-22-R, DSRPI-03-24-R, DSRPI-03-26-R, DSRPI-03-28-R, DSRPI-03-30-R, DSRPI-03-32-R, DSRPI-03-34-R, DSRPI-03-36-R

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. Hussmann may submit a petition for waiver and request for grant of interim waiver, as appropriate, for additional models of commercial refrigerators, freezers and refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR Part 429.

III. Alternate Test Procedure

As a condition for granting this interim waiver to Hussmann, DOE requires Hussmann to test the commercial refrigerators specified in its December 7, 2011 petition and listed above according to the specified test procedure, Air-Conditioning and Refrigeration Institute (ARI) Standard 1200–2006, “Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets,” except that instead of testing at the required integrated average temperature of $38 \pm 2^{\circ}\text{F}$, Hussmann shall test the specified basic models at an integrated average temperature of $49 \pm 2^{\circ}\text{F}$.

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of Hussmann's petition for waiver from the test procedures that apply to commercial refrigerators, freezers and refrigerator-freezers. For the reasons articulated above, DOE also grants Hussmann an interim waiver from those procedures. DOE is publishing Hussmann's petition for waiver in its entirety pursuant to 10 CFR 430.401(b)(1)(iv). The petition contains no confidential information. Furthermore, today's notice includes an alternate test procedure that Hussmann is required to follow as a condition of its interim waiver.

DOE solicits comments from interested parties on all aspects of the petition. Pursuant to 10 CFR 431.401(d), any person submitting written comments must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Ron Shebik, Compliance Manager, Hussmann Corporation, 12999 St. Charles Rock Road, Bridgeton, MO 63044. All submissions received must include the case number for this proceeding, CR-002. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes). According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document

including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on January 25, 2012

Kathleen B. Hogan
Deputy Assistant Secretary for Energy Efficiency
Energy Efficiency and Renewable Energy

Petition for a Waiver

Request for a test procedure waiver from DOE pursuant to provisions described in 10 CFR 431.401 for the following product on the grounds of “The prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data”

The design characteristics constituting the grounds for the Petition for the Waiver:

- 1.1 Commercial Refrigerators are intended to hold and display bulk produce (whole, uncut fresh fruits and/or vegetables). These refrigerators are manufactured in both “Remote” and “Self-Contained” version.
- 1.2 These commercial refrigerators are typically designed to hold the produce at an Average Integrated Temperature (AIT) of 41°F ~ 50°F range (The amount and method of merchandising the food product varies which results in a wide range of AIT). Whole, uncut fresh fruits/vegetables are not considered to be potentially hazardous foods by the FDA and therefore do not require time/temperature control for safety of the food.
- 1.3 DOE requires testing Medium Temperature commercial refrigerators at an AIT of 38°F ± 2°F.
- 1.4 In order to reduce the AIT from 41°F ~ 50°F range to an AIT of 38°F ± 2°F, manufacturers will have to take the following steps:
 - a) Increase energy consumption to reduce the AIT;
 - b) Significantly change the design;
 - c) Use higher energy consuming components such as condensing units or increase the number of energy consuming components such as condensing units; and
 - d) Use evaporator coils that would consume higher amounts of refrigerant and use higher capacity coil which will consume more BTU’s which translates into higher energy consumption.

Need for the requested waiver:

- 1.5 It is clear that the law requires commercial refrigerators to be tested and certified using the test procedure set forth at 10 C.F.R. Pt 431, Subpt. C, Sec. 431.64 – or be subject to a waiver – before they are sold in commerce. But DOE’s test procedure which establishes the 38°F ± 2°F AIT criteria based on the medium temperature application simply does not contemplate commercial refrigerators (remote and/or self-contained) that are designed to hold and display bulk produce (whole, uncut fresh fruits and/or vegetables).
- 1.6 There is no existing DOE Test Procedure without a waiver establishing an alternative test procedure for such products, there is no way to know how a model of such product should be tested, whether a model complies with the standard, and how the model’s energy use compares to others with similar features.

- 1.7 Testing of commercial refrigerators intended to hold and/or display bulk produce would increase the energy consumption and defeat the intent and spirit of energy conservation set forth by DOE. (NOTE: These cases do meet the maximum energy allowance limits set forth by DOE for the applicable DOE Equipment Class with the current AIT of 41°F ~ 50°F range. Reducing the AIT to 38°F + 2°F only for test purposes will increase the energy consumption.)

Basic Models on which the waiver is being requested:

DBRP-03-4-R, DBRP-03-6-R, DBRP-03-8-R, DBRP-03-10-R, DBRP-03-12-R, DBRP-03-14-R, DBRP-03-16-R,
DBRP-03-18-R, DBRP-03-20-R, DBRP-03-22-R, DBRP-03-24-R, DBRP-03-26-R, DBRP-03-28-R,
DBRP-03-30-R, DBRP-03-32-R, DBRP-03-34-R, DBRP-03-36-R

DSRP-03-5-R, DSRP-03-6-R, DSRP-03-8-R, DSRP-03-10-R, DSRP-03-12-R, DSRP-03-14-R, DSRP-03-16-R,
DSRP-03-18-R, DSRP-03-20-R, DSRP-03-22-R, DSRP-03-24-R, DSRP-03-26-R, DSRP-03-28-R, DSRP-03-30-R,
DSRP-03-32-R, DSRP-03-34-R, DSRP-03-36-R

DSRPI-03-5-R, DSRPI-03-6-R, DSRPI-03-8-R, DSRPI-03-10-R, DSRPI-03-12-R, DSRPI-03-14-R,
DSRPI-03-16-R, DSRPI-03-18-R, DSRPI-03-20-R, DSRPI-03-22-R, DSRPI-03-24-R, DSRPI-03-26-R,
DSRPI-03-28-R, DSRPI-03-30-R, DSRPI-03-32-R, DSRPI-03-34-R, DSRPI-03-36-R

Specific Requirements sought to be waived – Commercial Refrigerators intended to hold and/or display bulk produce (whole, uncut fresh fruits and/or vegetables) shall be exempt from DOE's requirement to test and certify in accordance with 10 C.F.R Pt 431 and be exempt from certification, compliance and enforcement in accordance with 10 C.F.R Pt 429.

List of manufacturers of all other basic models marketed in the United States and known to the petitioner to incorporate similar design characteristic(s) –

Manufacturer: Hill Phoenix Models: OEP, O3IP, and OIP

Manufacturer: Kysor Warren Models: P1W

Application for Interim Waiver

Request for a test procedure Interim Waiver from DOE pursuant to provisions described in 10 CFR 431.401 for the following product on the grounds of “The prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data”

The design characteristics constituting the grounds for the Interim Waiver Application:

- 1.1 Commercial Refrigerators are intended to hold and display bulk produce (whole, uncut fresh fruits and/or vegetables). These refrigerators are manufactured in both “Remote” and “Self-Contained” version.
- 1.2 These commercial refrigerators are typically designed to hold the produce at an Average Integrated Temperature (AIT) of 41°F ~ 50°F range (The amount and method of merchandising the food product varies which results in a wide range of AIT). Whole, uncut fresh fruits/vegetables are not considered to be potentially hazardous foods by the FDA and therefore do not require time/temperature control for safety of the food. Moreover, the optimum temperature range to preserve freshness is 40°F ~ 50°F.
- 1.3 DOE requires testing Medium Temperature commercial refrigerators at an AIT of 38°F ± 2°F.
- 1.4 In order to reduce the AIT from the existing 41°F ~ 50°F range to an AIT of 38°F ± 2°F, manufacturers will have to take the following steps:
 - a) Increase energy consumption to reduce the AIT.
 - b) Significantly change the design.
 - c) Use higher energy consuming components such as condensing units or increase the number of energy consuming components such as condensing units, and
 - d) Use evaporator coils that would consume higher amounts of refrigerant and use higher capacity coil which will consume more BTU’s which translates into higher energy consumption.

Need for the requested Interim Waiver:

- 1.5 It is clear that the law requires commercial refrigerators to be tested and certified using the test procedure set forth at 10 C.F.R. Pt 431, Subpt. C, Sec. 431.64 – or be subject to a waiver – before they are sold in commerce. But DOE’s test procedure which establishes the 38°F ± 2°F AIT criteria based on the medium temperature application simply does not contemplate commercial refrigerators (remote and/or self-contained) that are designed to hold and display bulk produce (whole, uncut fresh fruits and/or vegetables).
- 1.6 There is no existing DOE Test Procedure without a waiver establishing an alternative test procedure for such products, there is no way to know how a model of such product should be tested, whether a model complies with the standard, and how the model’s energy use compares to others with similar features.

- 1.7 Testing of commercial refrigerators intended to hold and/or display bulk produce would increase the energy consumption and defeat the intent and spirit of energy conservation set forth by DOE. (NOTE: These cases do meet the maximum energy allowance limits set forth by DOE for the applicable DOE Equipment Class with the current AIT of 41°F ~ 50°F range. Reducing the AIT to 38°F + 2°F only for test purposes will increase the energy consumption.)

Basic Models on which the Interim Waiver is being requested:

DBRP-03-4-R, DBRP-03-6-R, DBRP-03-8-R, DBRP-03-10-R, DBRP-03-12-R, DBRP-03-14-R, DBRP-03-16-R,

DBRP-03-18-R, DBRP-03-20-R, DBRP-03-22-R, DBRP-03-24-R, DBRP-03-26-R, DBRP-03-28-R, DBRP-03-30-R, DBRP-03-32-R, DBRP-03-34-R, DBRP-03-36-R

DSRP-03-5-R, DSRP-03-6-R, DSRP-03-8-R, DSRP-03-10-R, DSRP-03-12-R, DSRP-03-14-R, DSRP-03-16-R,

DSRP-03-18-R, DSRP-03-20-R, DSRP-03-22-R, DSRP-03-24-R, DSRP-03-26-R, DSRP-03-28-R, DSRP-03-30-R,

DSRP-03-32-R, DSRP-03-34-R, DSRP-03-36-R

DSRPI-03-5-R, DSRPI-03-6-R, DSRPI-03-8-R, DSRPI-03-10-R, DSRPI-03-12-R, DSRPI-03-14-R, DSRPI-03-16-R, DSRPI-03-18-R, DSRPI-03-20-R, DSRPI-03-22-R, DSRPI-03-24-R, DSRPI-03-26-R, DSRPI-03-28-R, DSRPI-03-30-R, DSRPI-03-32-R, DSRPI-03-34-R, DSRPI-03-36-R

Specific Requirements sought to be waived – Commercial Refrigerators intended to hold and/or display bulk produce (whole, uncut fresh fruits and/or vegetables) shall be exempt from DOE's requirement to test and certify in accordance with 10 C.F.R Pt 431 and be exempt from certification, compliance and enforcement in accordance with 10 C.F.R Pt 429.

Alternate test procedures known to the petitioner to evaluate the characteristics of the basic model in a manner representative of its energy consumption – An alternate test temperature of 49 ± 2 degrees Fahrenheit would be an acceptable test temperature.

Success of the application for Interim Waiver will: Ensure that the spirit and intent of conserving energy by DOE is followed and maintained.

What economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the Application for Interim Waiver – Economic hardship will be loss of sales due to not meeting the DOE requirements set forth. If the existing products were altered to meet the current DOE requirements, it would add significant cost and increase energy consumption.

Conclusion:

Husmann Corporation seeks an Interim Waiver from DOE's current requirement to test and certify in accordance with 10 C.F.R Pt 431 and be exempt from certification, compliance and

enforcement in accordance with 10 C.F.R Pt. 429. Such a waiver is necessary because the current prescribed test procedures produce materially inaccurate and unrepresentative data for regulatory and consumer information purposes.

Husmann Corporation respectfully asks the Department of Energy to grant an Interim Waiver from existing test standards until such time as a representative test procedure is developed and adopted for this class of products.

If we can provide further information, or if it would be helpful to discuss any of these matters further, please contact Ron Shebik, Compliance Manager, at (314) 298-6483.

Sincerely,

Ron Shebik
Compliance Manager, Husmann Corporation
12999 St. Charles Rock Road
Bridgeton, MO 63044

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